

Assembly Bill No. 2586

Passed the Assembly August 31, 2006

Chief Clerk of the Assembly

Passed the Senate August 30, 2006

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2006, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 1170.9 of the Penal Code, relating to sentencing.

LEGISLATIVE COUNSEL'S DIGEST

AB 2586, Parra. Sentencing: veterans: treatment programs.

Under existing law, if a convicted defendant was a member of the military forces of the United States who served in combat in Vietnam and who suffers from substance abuse or psychological problems resulting from that service, the court may, under specified circumstances, order the defendant committed to the custody of federal correctional officials for incarceration for a term equivalent to that which the defendant would have served in state prison.

This bill would instead provide that if a person is convicted of a criminal offense and alleges that he or she committed the offense as a result of post-traumatic stress disorder, substance abuse, or psychological problems stemming from service in combat in the United States military, the court shall hold a hearing prior to sentencing to make a determination about that allegation. If the court finds that the defendant's crime was committed as a result of one of those factors related to serving in combat, and the court places the person on probation, the bill would authorize the court to place the person into a treatment program, as specified.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) Post-traumatic stress disorder (PTSD) is an inclusive title for a complex of mental disorders and conditions caused by exposure to severe, violent, and threatening situations like those experienced by military personnel in combat.

(b) Once brushed aside as shell shock or combat fatigue, PTSD was finally recognized as an illness by the American

Psychiatric Association in 1980 based upon the psychiatric experience of veterans of the Vietnam war.

(c) During and after the Vietnam war, a significant number of our returning combat veterans were incarcerated because of behavior caused or exacerbated by their misunderstood and untreated PTSD.

(d) In 1982, 10 years after the Vietnam war, the California Legislature passed Section 1170.9 of the Penal Code. That section is not sufficient to cover returning Iraq and Afghanistan veterans.

(e) Therefore, it is the intent of the Legislature to extend the opportunity for alternative sentencing to all combat veterans, regardless of where or when those veterans served our country, when those veterans are found by the court to be suffering from PTSD.

(f) It is not the intent of the Legislature to expand probation eligibility for veterans who commit crimes pursuant to these provisions.

(g) It is the intent of the Legislature to ensure that judges are aware that a criminal defendant is a combat veteran with these conditions at the time of sentencing and to be aware of any treatment programs that exist and are appropriate for the person at the time of sentencing if a sentence of probation is appropriate.

SEC. 2. Section 1170.9 of the Penal Code is amended to read:

1170.9. (a) In the case of any person convicted of a criminal offense who would otherwise be sentenced to county jail or state prison and who alleges that he or she committed the offense as a result of post-traumatic stress disorder, substance abuse, or psychological problems stemming from service in a combat theater in the United States military, the court shall, prior to sentencing, hold a hearing to determine whether the defendant was a member of the military forces of the United States who served in combat and shall assess whether the defendant suffers from post-traumatic stress disorder, substance abuse, or psychological problems as a result of that service.

(b) If the court concludes that a defendant convicted of a criminal offense is a person described in subdivision (a), and if the defendant is otherwise eligible for probation and the court places the defendant on probation, the court may order the defendant into a local, state, federal, or private nonprofit

treatment program for a period not to exceed that which the defendant would have served in state prison or county jail, provided the defendant agrees to participate in the program and the court determines that an appropriate treatment program exists.

(c) If a referral is made to the county mental health authority, the county shall be obligated to provide mental health treatment services only to the extent that resources are available for that purpose, as described in paragraph (5) of subdivision (b) of Section 5600.3 of the Welfare and Institutions Code. If mental health treatment services are ordered by the court, the county mental health agency shall coordinate appropriate referral of the defendant to the county veterans service officer, as described in paragraph (5) of subdivision (b) of Section 5600.3 of the Welfare and Institutions Code. The county mental health agency shall not be responsible for providing services outside its traditional scope of services. An order shall be made referring a defendant to a county mental health agency only if that agency has agreed to accept responsibility for the treatment of the defendant.

(d) When determining the “needs of the defendant,” for purposes of Section 1202.7, the court shall consider the fact that the defendant is a person described in subdivision (a) in assessing whether the defendant should be placed on probation and whether the defendant would be best served while on probation by being ordered into a private nonprofit treatment service program with a demonstrated history of specializing in the treatment of military service-related issues, such as post-traumatic stress disorder, substance abuse, or psychological problems.

(e) A defendant granted probation under this section and committed to a residential treatment program shall earn sentence credits for the actual time the defendant served in residential treatment.

(f) The court, in making an order under this section to commit a defendant to an established treatment program, shall give preference to a treatment program that has a history of successfully treating combat veterans who suffer from post-traumatic stress disorder, substance abuse, or psychological problems as a result of that service.

Approved _____, 2006

Governor